IN THE HIGH COURT
REPUBLIC OF THE MARSHALL ISLANDS

BERNIE HITTO and HANDY EMIL,[1] Plaintiffs, -v- RAEIN TOKA[2] and NANCY CALEB, aka NANCY PIAMON, on behalf of BILLY PIAMON,[3] Defendants[4] and ALDEN BEJANG, AUN JAMES, AMON JEBREJREJ and CAROLINA KINERE, Defendants/Counterclaimants[5]	Civil Action Numbers 21-80 and 1986-149 (consolidated)[6] **JUDGMENT**

To: Scott Stege
David Lowe
James McCaffrey

[1] The court has *sua sponte* amended the caption to reflect the most current substitution of parties. A motion to substitute Handy Emil for Luckner Abner, who died April 16, 2013, was filed August 26, 2013. Although no objections were filed, it was never ruled on. The motion is granted.
[2] A motion to substitute Raein Toka for Towe Toka, who died June 24, 2012, was filed October 4, 2012. Although no objections were filed, it was never ruled on. The motion is granted.
[3] Nancy Caleb first entered an appearance on December 8, 1997, "for and on behalf" of her brother, Billy Piamon, who died, on September 24, 2006. At the trial in 2001, her lawyer referred to her as Nancy Piamon. On June 13, 2007, Mr. Lowe filed a motion to substitute Hancy Caleb for Billy Piamon. Plaintiffs filed an objection based on their assumption that Hancy Caleb was not the same person as Nancy Caleb. It does not appear this motion was rule on or addressed further. Due to the judgment entered here, the court does not need to address the merits of the motion.
[4] These parties will be referred to collectively as "Defendants," for convenience and to avoid confusion with the intervening defendants/counterclaimants.
[5] On September 3, 1997, Drioji Bejan, Aun James, Amon Jebrejrej and Calorina Kinere moved to intervene as defendants and counterclaimants. On October 23, 1997, that motion was granted. Confusion resulted from these parties being referred to as Intervenors at the 2001 trial. (Corrected Transcript of Proceedings, December 19, 2001, page 42). They intervened as defendants, and filed a counterclaim. For convenience and to avoid further confusion, they will be referred to collectively as "Counterclaimants."
[6] On September 30, 1996, the High Court ordered 1986-149 "merged" with 21-80 (on remand).

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I. Why this Conflict is Before the Court

Long ago, Iroijlaplap Laninbit was faced with a dispute. He resolved it by making certain decisions. After Laninbit's time, Iroijlaplap Jeimata made a decision that conflicted with Laninbit's decisions. The conflict between these decisions was not felt immediately. Only gradually, over time, did the conflict trigger a dispute that remains unresolved to this day. Successor iroijs have dealt with the effects of the conflict, and all have achieved various degrees of success. But none has achieved a permanent solution.

Before the Marshallese people came to be ruled by foreigners, the iroijlaplap's power was absolute. After foreign rule came to the Marshall Islands, the iroijlaplap's power was subject to the foreigners' laws. And while the iroij's power was still great, it was no longer absolute or unrestrained. Before, no one questioned an iroij's decisions. Now, if the iroij's decisions are questioned, they are scrutinized and must be supported by good cause.

The current dispute between the descendants of Abner and Jibke arose after the death of Iroijlaplap Jeimata, who had, during his lifetime, made very skillful decisions in the interest of achieving peace and harmony among his people. No one questioned his decisions. But his successors found themselves in a challenging predicament when one of Jeimata's decisions was questioned. They were bound to honor their predecessor iroij's decision, but that decision was only known by oral history, memory and reference to the Iroij Book. The reasons for the original decision were not known, at least not publicly. Regardless, each successor iroij chose to honor and follow Jeimata's decision. When that decision was questioned, and the conflict ended up before the Court, it was revealed that each successor iroij had his own explanation for Jeimata's decision, but none was aware of what good cause formed the basis for Jeimata's decision.

Now, the Marshallese people, including iroijlaplaps, are subject to the combined authority provided for in the Constitution: a balance between the Cabinet, the Nitijela, the Council of Iroij, and the Judiciary. In situations where a conflict is grounded in custom and tradition, it comes before the Judiciary only if all other avenues of dispute resolution fail. The other branches of the government still retain the power to resolve land conflicts

that stem from matters of custom and tradition. The Nitijela has the power to declare, by Act, the customary law in the Republic.[7] The Cabinet, whose members are collectively responsible to the Nitijela,[8] has a duty to recommend legislative proposals to the Nitijela.[9] And the Council of Iroij may consider any matter of concern to the Republic,[10] may express its opinion on any such matters to the Cabinet,[11] and may request reconsideration of any Bill affecting any matter of customary law, traditional practice or land tenure.[12] Even when a controversy over these matters comes before the Court, the Iroijlaplap, by specific rules of the Court, remains the arbiter of first resort.[13] Only when the laws and decisions of these powers fail to resolve the dispute, does it fall upon the Judiciary to do so.

In July of 1982, Abner and Jibke's successors agreed, during the first trial held in this case, to meet with Iroij Manini, and to honor whatever decision he made to put an end to the dispute. Sadly, Manini was too ill to meet with them, and that great opportunity to achieve peace and harmony, and to avoid further involvement by the courts, was lost. The parties have not returned, together, to Manini's successors for settlement, and the iroijs, while having expressed opinions on this matter, have not exercised their power outside the court system to resolve the conflict. And so the conflict has continued before the courts for almost 35 years, and the courts, too, have failed to implement the primary mandate of their own rules: to secure the just, speedy, and inexpensive determination of this action.[14]

Today, the High Court enters final orders concerning this dispute, achieving a resolution in law. And while the Supreme Court has final authority to adjudicate this controversy, it still remains for the Iroijlaplap and his people to achieve a resolution in fact. Many may disagree with the Court's adjudication, but the Iroijlaplap, and his

[7] Const., Article X, Section 2(1).
[8] Const., Article V, Section 1(1).
[9] Const., Article V, Section 3(b).
[10] Const., Article III, Section 2(a).
[11] *Id.*
[12] Const., Article III, Section 2(b).
[13] Special Rule of Civil Procedure, Rule 1(a)(1).
[14] Rule 1, Rules of Civil Procedure.

successors, are still owed a duty of loyalty by those whose interests are recognized by this adjudication. Only if these people honor their duties to one another, may justice ultimately be served.

II. History of this Case and its People: 1980 - 2015

1980 - 1982

On September 17, 1980, the original complaint, captioned *Abner, et al., v. Jibke and Jebrejrej, et al.*, was filed in Civil Action 21-80. On July 21, 1982, Mathline Aini filed an answer. After a seven day trial on Ebeye, the High Court issued its decision in October of 1982, and entered judgment in favor of Jibke's successors, declaring them to be holders of the alab and dri jerbal rights on Aibwij, Monke and Lojonen wetos.

1984

On August 6, the Supreme Court reversed the High Court's decision, remanded the case for further proceedings, and recommended the case be referred to the Traditional Rights Court.

1985

In February, the High Court entered an order referring the case to the Traditional Rights Court. In October, the High Court granted Plaintiffs' request for a preliminary injunction, noting the Trust Territory High Court had already enjoined Defendants from receiving or disbursing alab and dri jerbal IUA payments for Aibwij, Monke and Lojonen wetos in November of 1981.

The case was not addressed by the Traditional Rights Court in 1985.

1986

After a conference with a Trust Territory Judge in October, the parties stipulated to dismiss CA 21-80 in favor of Plaintiffs filing a new case that named living parties, as both Abner and Jibke had died before CA 21-80 was filed.[15] On November 11, Civil Action 1986-149 was filed, captioned *Ellan Jorkan and Matrine Abner v. Matline Aini and Clemen Korok.* Defendants filed answers in December.

[15] This conference was held off the record, and the court did not enter an order from the conference. Later court orders reference this action.

1987

In August, Clemen Korok's lawyer filed a motion to dismiss for failure to prosecute and unjustifiable delay.

Clemen Korok died on December 24.

1988

In February, the court set trial for April.

In March, Beljo Korok, who had substituted as a party after Clemen's death, filed a motion to vacate the preliminary injunction on the basis of financial hardship. The court set the motion for hearing in July, but the hearing did not take place. Nor did the case go to trial in April, as scheduled.

1989

Ellan Jorkan died on November 2.

1990

In December, Matline Aini filed a motion to dismiss for failure to prosecute, citing financial hardship caused by the preliminary injunction. The following week, the court set a pretrial conference for February of 1991. The court never ruled on Matline's motion.

1991

In February, Plaintiffs' current lawyer entered his appearance in this case. At a status hearing later that month, Judge Bird noted, "[H]opefully we can get this case which has now grown a beard as gray as mine brought to fruition. . . . It has languished . . ." He set some pretrial deadlines and stated, "Let's start categorizing these things. If we leave them all open now we'll be back here a year from now having the same conversation and trust me, I don't want to do that. I don't think you want to do it and I know your clients don't want to do it, o.k.?" Judge Bird apparently left the High Court later that spring.

1993

There is no record of anything having happened in the case for over two years until July of 1993, when Matline Aini filed another motion to dismiss. Her lawyer painstakingly stepped through the lack of progress in the case, and pointed out that

Plaintiffs' counsel had failed to comply with the February 1991 deadlines. He stated, "Even taking into consideration the considerable Marshallese patience and forbearance, to allow this suit to remain on the calendar would be absolutely contrary to basic justice for this poor woman [Matline Aini], who is entitled to dismissal for want of prosecution . . . . the 13 year delay, coupled with a new opportunity in 1991 for Plaintiffs to prosecute this case and subsequent failure to do so, is without question, a terrible miscarriage of justice." The court heard Matline's on July 13, and entered the following one sentence ruling: "The Court considered the motion over the objection of Plaintiff's Counsel and denied the motion."

On August 3, plaintiffs Enti Tibon and Matrine Abner filed an amended complaint against defendants Beljo Korok and Matline Aini.

On December 7, defense counsel filed a motion to continue the December 14 pretrial conference due to a scheduling conflict. On December 14, the High Court granted that motion and stated, "It is ordered that this matter be dropped from the calendar until proper notice is given for a further hearing."

1994

On September 13, Plaintiffs' counsel requested the pretrial conference be rescheduled. In his affidavit, counsel stated: "Plaintiffs are prepared, are ready and desire to proceed to bring this matter to a conclusion after nearly fourteen years of waiting and are concerned that long delay only works to Defendant's advantage." Plaintiffs also filed a motion for default judgment against Beljo Korok. The court took no action on either motion.

1995

Plaintiffs' counsel again requested the court address the motions filed in 1994.

1996

In March, a hearing was scheduled for May. Days before the May hearing, Beljo Korok's lawyer moved to withdraw based on a conflict. The court held the May hearing, set pretrial deadlines and set trial for November 25, 1996, before the Traditional Rights

Court and High Court. On September 30 the court entered more pretrial orders and entered default judgment against Beljo Korak.[16]

In November, the court ordered the amended complaint in CA 1986-149 be deemed to relate back to the date of filing the complaint in CA 21-80, and vacated the trial set for later that month.

1997

In January, the court ordered the Iroij Book be produced. In February, the court noted that it had been produced and entered further pretrial orders. In July, the High Court entered a lengthy decision concerning the law of the case. In September, Defendants filed a motion to join parties, and Drioji Bejang, Aun James, Amon Jebrejrej, and Calorina Kinere moved to intervene, to protect interests they claimed in Monke and Lojonen wetos. In granting these motions, the High Court stated; "It should not be too much to expect that these proposed new parties and all counsel give their highest priority to this case and cooperate in getting this decades old dispute to a prompt resolution by trial. . . . The court is loath to again delay plaintiffs' day in court."

The intervening defendants filed their answer and counterclaims in October. In December the court set trial before the Traditional Rights Court for May 11, 1998.

1998

Trial was not held on May 11, or at any time in 1998.

1999

Matline Aini died on September 13.

On September 22, in response to this case having been placed on a Dismissal Docket, Plaintiffs filed a response to show cause why the case should not be dismissed.

Enti Tibon died on December 6.

2000

Droiji Bejang died on March 21.

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[16] On November 6, 1996, the High Court ordered the motion for default be held in abeyance until the case went to judgment. During the 2001 trial, High Court Justice Johnson, sitting with the Traditional Rights Court, held that the matter of Korok's default had been decided, and declined to entertain any further argument on the issue.